

March 6, 2018

Justin Gordon
Office of the Attorney General
Open Records Division
Price Daniel, Sr., State Office Building
P.O. Box 12548

RE: HHSC request 14306

Der Mr. Gordon,

On January 18, 2018, *The Dallas Morning News* requested, "UMCM exceptions granted to managed care organizations relating to network adequacy (time, distance, ratios, etc.), affiliate transactions and administrative spending." The Health and Human Services Commission contends portions of the records are confidential under 552.111.

I'd like to note that this request, attached as **Exhibit A**, draws directly from a previous request, portions of which are attached as **Exhibit B**, in which the commission released these records without redaction or need for a open records ruling from your office. The specificity of this request was tailored directly from the title of the records that the commission had previously released. It is surprising the commission has taken the position that these exceptions are somehow now confidential.

The commission contends that these exceptions are exempt from disclosure because they are interagency memoranda that would not be available to a party in litigation with the agency. The commission further contends that portions of these exceptions relate to advice, recommendations, etc. on policymaking matters. This is a mischaracterization of what these documents are.

We have requested exceptions to a master contract between HHSC and several vendors. These are specific instances in which a vendor has been given special permission or variance to perform below the measures set forth in the contract, which is widely available to the public and has been previously released by the commission to this requestor. These records have no bearing on policymaking whatsoever, but do contain information vital to the public interest. They detail how

often the commission has allowed contractors to fail standards, and the nature of those standards, which the commission advertises as central to their oversight of the largest state expenditures, Medicaid.

The commission equivocates on the relevancy of several previous Open Records Decisions to this request but further contends that the aforementioned factual information, which is vital to the public interest, is somehow inextricably intertwined with information that is subject to the deliberative process privilege. This is a mischaracterization of these records. These are decisions that were made by regulators who oversee a contract, not policy makers, and detail the breadth and frequency of the commission's exceptions to the contract.

As it pertains to affiliate agreements, the commission has provided contradictory information on its adherence to the UMCM as it pertains to a practice known as "spread pricing," in which a Medicaid vendor's Pharmacy Benefit Manager collects a higher payment for drugs than it pays to the pharmacy. Multiple audits and other records previously released by the commission detail the existence of this practice, which is specifically prohibited in the UMCM, yet somehow occurring. We believe these public records may show the commission allowed a practice that is specifically prohibited by contract by way of an exception.

To exempt these records from public disclosure would set a bad precedent for the exclusion of a wide array of records which might shine light on how public officials can circumvent public scrutiny and provide special treatment to a vendor or otherwise give permission to abrogate on terms of a contract, which is designed to ensure taxpayer money is being well spent.

We request that you rule to release these records and deem them subject to the Texas Public Information Act.

If you have any questions about this matter, please give me a call at 512-370-3802.

Sincerely,

J. David McSwane
Reporter
The Dallas Morning News

Exhibit A

Exhibit B